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Supreme Court of the United States

OCTOBER TERM, 1990

R. A. V.,
Appellant,

v.

CITY OF ST. PAUL, MINNESOTA,
Appellee.

BRIEF OF AMICUS CURIAE PATRIOT'S DEFENSE FOUNDATION, INC. IN SUPPORT OF THE APPELLANT, R. A. V.

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I. The Interest of Amicus Curiae, Patriots' Defense Foundation, Inc.

The Patriot's Defense Foundation, Inc. (the Foundation) hereby files this amicus curiae brief, it having obtained the written consent for doing so from both counsel for the Appellant, R.A.V., and the Appellee, the City of St. Paul, Minnesota.

The Foundation is a public interest legal assistance organization headquartered in Houston, Texas and which has its address at 2323 McCue, Suite 2, Houston, Texas 77056. It seeks to protect the vital First Amendment rights of political activists and spokespersons who advocate the ideology that the United States should remain a predominantly Christian, Anglo-Saxon and European derived nation with all that proposition entails in terms of cultural, social and religious norms. Nevertheless, the Foundation supports the right of every person within the geographic boundaries of the United States of America to freely express his or her opinion on social, political or racial issues in an unfettered manner regardless of that persons racial or religious background or political affiliation. The Foundation considers an ordinance such as that at issue in this case to be a mortal danger to this right.

II. Argument

The Foundation at the outset states its firm belief that any individual, whatever his or her political belief or affiliation, religious background and/or racial or ethnic background, should be prosecuted and punished in accord with fundamental principles of due process if that person commits what has traditionally been considered to be a crime against the person or property. Its objection to statutes of this nature is that punishing the person for the offending act proscribed therein is inextricably bound up with chastising that person for his social, political or racial beliefs, governmental action that has heretofore been proscribed by the First Amendment. More importantly, laws of this nature have a definite tendency to criminalize acts of politically expressive

conduct which have traditionally been accorded First Amendment protection. Statutes such as the one at issue herein undoubtedly also open wide the gate to politically discriminatory prosecutions which clearly contravene basic principles of the Bill of Rights and the Fourteenth Amendment.

The ordinance purports to punish anyone who places on public or private property, among other things, a burning cross or swastika when that person has reasonable grounds for believing that such a display will elicit an adverse reaction from other people on the basis of race, color, creed, religion, or gender. . . ." To the extent that the act purports to outlaw politically expressive conduct for the principal reason that such expression disturbs the emotional equilibrium of those who see or hear such expression, it certainly contravenes several well established precedents of this Court in the area of First Amendment jurisprudence. "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea offensive or disagreeable." *Texas v. Johnson*,____U.S.____, 109 S. Ct. 2533, 2544, 105 L.Ed.2d 342 (1989).

> Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stir people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, *Chaplinsky v. New Hampshire*,

> supra, 315 U.S. at pages 571-572, 62 S. Ct. at pages 571-572, 62 S. Ct. at page 769. 86 L.Ed. 1031, is nevertheless protected against censorship or punishment unless it is shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest. *See Bridges v. California*, 314 U.S. 252, 262, 62 S. Ct. 190, 193, 86 L.Ed. 192, 159 ALR 1346; *Craig v. Harney*, 331 U.S. 367, 373, 67 S. Ct. 1249, 91 L.Ed. 1546. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups. *Terminello v. City of Chicago*. 337 U.S. 1, 4-5 (1949)

There can be no question but that the city of St. Paul, by enacting this ordinance, is attempting to standardize what it considers to be the "politically correct" expression of ideas concerning intergroup relations that a vast majority of its inhabitants in all probability consider to be moral, just and right. It is doing so by outlawing the display of symbols that cause "resentment" on the part of racial, ethnic or religious groups who are offended by such a display. In effect, one group is being given veto power over another individual's right to freedom of expression because such expression hurts the feelings of the members of the offended group. A notion more foreign to our basic concept of constitutional liberties can scarcely be imagined.

More invidious, however, is the effect of this and similar statutes in putting the alleged perpetrator on trial not only for what he has supposedly done, but for what he beileves. Indeed, the two prominently mentioned examples of prohibited acts—burning a cross and

displaying a Nazi swastika—leave little doubt as to what category of political dissidents is the target of this ordinance. Significantly, the Court has held that the right to believe in and subscribe to unconventional and unpopular ideas cannot be divorced from the right to freely and publicly express them:

> Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 513 (1969).

In effect, the Court has said that to punish the expression of a controversial idea, when such expression does not amount to an incitement to imminent lawless action, is the functional equivalent of punishing the individual who articulates it for believing in or adhering to it. This ordinance has precisely the effect of punishing a person more for the contents of his thoughts than it does for chastising him for the social damaging effect of his acts and it therefore constitutes a direct and impermissible burden on vital First Amendment rights.

Racism and anti-semitism may very well be the serious social problems that many observers believe them to be. Nevertheless, government has no business even indirectly attempting to punish persons for the contents of their thoughts no matter how obnoxious men of good will may consider them to be. In 1969 this Court held in *Stanley v. Georgia,* 394 U.S. 557, 566 (1969) "Whatever the power of the state to control public dissemination of ideas inimical to the public morality, it cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts." If burning crosses or swastika should be banned from public display because these symbols cause "anger, alarm and resentment" to arise in the minds of members of certain ethnic or religious groups, then should not government be allowed to prohibit racist and anti-semitic books, magazines and newspapers from being openly sold in bookstores and on newsstands for the same reason? Where is the line to be drawn concerning such censorship?

No terrorist or criminal should be excused from paying the penalty for his criminal act because he was motivated by ideological or, to his mind, altruistic reasons to commit the offense. On the other hand, there is absolutely no reason why a person who commits a crime for political or ideological reasons should receive a more severe criminal sanction for that reason than a person who commits a similar act on account of covetousness, greed, a desire for revenge, generalized malevolence or for some other base reason.[1] Crime is crime and the

1. Amicus curiae realizes that the ordinance at issue herein provides only for misdemeanor punishment. Nevertheless, it is its firmly fixed belief that if this statute is upheld by this Court, the inevitable tendency of many legislative bodies will to make so-called "hate crimes" felony offenses or otherwise provide for more severe penalties for incidents that in many instances would otherwise be nothing more than police court crimes if there were no ideological or racial aspect to them. Once this sub-category of crime is validated by an opinion of this Court, there will be no meaningful restraint that can be imposed on lawmakers in creating crimes of this nature and in setting the penalties for them. Just this term the Court has strongly endorsed the principle that the states have a considerable amount of latitude in setting penalties for what they consider to be serious criminal offenses. See *Harmelin v. Michigan,* Case No. 89-7272, decided June 27, 1991.

person who rends the fabric of our society by committing an act that any reasonable person would consider to be criminal should be prosecuted and punished. Nevertheless, no criminal statute in this country should be enacted which assesses a putatively criminal act from the standpoint of prevailing ideological trends or which authorizes an inquiry into the mind of the alleged perpetrator in order to ascertain whether he was thinking forbidden, unpopular thoughts at the time that he purportedly committed the offense. To the extent that racial and religious violence is a serious concern in our society, there is every reason to believe that our existing criminal laws and civil sanctions are more than adequate to deal with the problem. There is absolutely no need for our federal, state and local legislatures to venture into the First Amendment quagmire that the city of St. Paul would have them beckoned into if this Court was to uphold the constitutionality of this legislation.

III. Summary of Argument

The ordinance at issue is irreparably overbroad in that it criminalizes politically expressive conduct that has consistently been afforded the protection of the First Amendment. Moreover, it clearly seeks to punish individuals for the unorthodox nature of their thoughts and

affiliations by making criminal the manner in which they express and publicly identify with these thoughts and affiliations. The inevitable result of legislation of this nature is to punish not only the purportedly anti-social act which may or may not be a crime in the manner in which we have traditionally understood the nature of criminal conduct, but also to punish the alleged perpetrator on account of his or her matrix of political and social beliefs which may very well have been a catalyst in causing that person to engage in the conduct at issue Such a category of ideologically defined crimes is inimical to basic First Amendment values, particularly when our traditional system of ideologically neutral criminal laws and civil sanctions is more than adequate to deal with the problems posed by racial, religious and ethnically oriented crime.

IV. Conclusion

Amicus curiae Patriot's Defense Foundation, Inc. urges the Court to strike down the ordinance under which the Appellant is being prosecuted as being in flagrant violation of the First Amendment guarantee of freedom of speech and expression, and to then remand the case to the Minnesota appellate courts for proceedings consistent with such a holding.

This 24th day of July, 1991.

Respectfully submitted,

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